

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
INBOUND E-FORMAT LETTER POST

Docket No. CP2020-120

**RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO NOTICE OF PRELIMINARY DETERMINATION**
(May 15, 2020)

The United States Postal Service (“Postal Service”) respectfully submits this response to the Notice of a Preliminary Determination to Unseal Self-declared Rates for Inbound Letter Post Small Packets and Bulky Letters, which the Postal Regulatory Commission issued on May 8, 2020 (the Notice).¹

In the Notice, the Commission preliminarily determined that the specific self-declared rates for the Postal Service’s inbound letter post small packets and bulky letters product (E-format letter post) “should be unsealed shortly after the Universal Postal Union [UPU] publishes these rates.”² The Commission correctly indicated that the UPU is expected to publish (that is, issue a “Circular” notice of) the rates by July 1, 2020, pursuant to the Universal Postal Convention.³

The specific rates now at issue are those that will take effect on January 1, 2021. Similarly, the Commission previously ordered the Postal Service to unseal the specific rates that will take effect on July 1, 2020, seven days after the UPU published them,⁴

¹ Notice of a Preliminary Determination to Unseal Self-declared Rates for Inbound Letter Post Small Packets and Bulky Letters, Order No. 5503, Docket No. CP2020-120 (May 8, 2020).

² Id. at 16.

³ Id. at 16 & n.26 (citing Convention article 28bis.1).

⁴ Id. at 3.

and the Postal Service duly complied with the Commission's earlier order.⁵

In again determining that the Postal Service must unseal the specific rates only "shortly after" the UPU issues its Circular notice (similar to the prior order for the earlier set of rates), rather than ordering the rates to be unsealed any earlier than that point in time, the Commission appropriately recognized the commercial harm that an earlier compelled disclosure could cause the Postal Service. In particular, in the Notice, the Commission acknowledged the concern that, "if self-declared rates are disclosed before the UPU IB publishes these rates, then the Postal Service would be disadvantaged when negotiating alternative rates with designated operators as the Postal Service does not expect to know the reciprocal self-declared rates."⁶ The Commission therefore determined that it would direct the public disclosure of the rates only after the issuance of the UPU Circular, based on its view that "the potential for designated operators to gain an unfair advantage in negotiating alternative rates in bilateral service agreements also terminates when the UPU IB publishes the self-declared rates that will go into effect on January 1, 2021, because designated operators would know other designated operators' self-declared rates."⁷

Although the Postal Service does not concur that its commercial harm from public disclosure ends upon issuance of the UPU Circular,⁸ nevertheless the Postal Service certainly does concur with the justification on which the Commission relied in

⁵ Id. at 3-4 (citing Notice of the United States Postal Service in Compliance with Order No. 5451, Docket Nos. MC2019-17 & CP2019-155 (April 6, 2020)).

⁶ Id. at 11 (citing Application for Non-public Treatment, at 8 (Att. 1 to Notice of the United States Postal Service of Specific Rates Not of General Applicability for Inbound E-format Letter Post for 2021, Docket No. CP2020-120 (April 10, 2020))).

⁷ Id. at 12.

⁸ The UPU does not "publish" the Circular publicly; accordingly, compelled disclosure of the Postal Service's inbound UPU rates still provides, for example, an unfair competitive advantage to private competitors even after issuance of the UPU Circular.

not ordering the unsealing of the rates until *after* the UPU issues its Circular⁹ – that is, foreign designated postal operators would gain an unfair advantage over the Postal Service in negotiating alternative rates before the issuance of the UPU Circular, by which the UPU simultaneously circulates both the Postal Service’s and the foreign operators’ self-declared rates. Moreover, this is not a mere hypothetical threat of harm; the Postal Service has entered into commercial contracts with foreign postal operators in the past to establish negotiated rates as alternatives to the default UPU rates, and it continues to negotiate actively to seek to conclude such contracts for future rates.

In its Comments filed in this case, United Parcel Service, Inc. (UPS) ambiguously stated that the Commission should “immediately order” the public disclosure of the Postal Service’s self-declared UPU rates.¹⁰ It is unclear from this phrasing whether UPS was asking only that the Commission immediately issue an order (which, in substance, could be consistent with the Commission’s earlier Order No. 5451, in directing the unsealing of the rates only after the UPU issues its corresponding Circular with such rates) or instead whether UPS was asking the Commission to order the immediate unsealing of the rates prior to issuance of the UPU Circular. If the latter, then the Commission should reject the UPS suggestion.¹¹ UPS has not tried to offer any reason to doubt the cited unfair advantage that foreign postal operators would gain from a compelled disclosure of the Postal Service’s rates before the issuance of the UPU Circular, and there is no reason for any such doubt.

Accordingly, the Postal Service respectfully urges the Commission not to order

⁹ See *id.* at 11-12.

¹⁰ United Parcel Service, Inc.’s Comments, Docket No. CP2020-120 (April 27, 2020), at 2.

¹¹ If the former, then the Commission has already rejected the UPS suggestion for an immediate order, contrary as it is to the Commission’s preliminary determination procedures. See Notice at 10 (citing 39 C.F.R. § 3011.103(c)).

the public disclosure of the Postal Service's self-declared rates (if at all) any earlier than a reasonable period of time after the UPU distributes via Circular all of the UPU operator self-declared rates that will take effect during the same period of time.

Respectfully submitted,

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